IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

COMPANY PETITION No. 152 of 2006
Connected with Company Application
No.299/2006.

In the Matter of Petition to sanction
the Scheme of Amalgamation of
M/s. Britacel Silicones Ltd.

M/S.BRITACEL SILICONES LTD.
..Transferor Company.

With

Company Petition No. 153 of 2006
Connected with Company Application
No.300 of 2006.

Enpee Pharma Pvt. Ltd. ..Transferee Company.

Mr. S. Purohit with R.C. Master.

Mr. S.C. Gupta, O.L. present.

Mr. C.J. Joy, R.D.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 30th June, 2006.

P.C.

1] Heard Mr. S. Purohit, learned counsel for the petitioner and Mr. C.J. Joy,counsel appearing for the Regional Director.

2] The Company Petitions are seeking sanction of this Court to a Scheme of Amalgamation.

3] The salient features of the Scheme have been set out in the petition. The compliance of

statutory provisions has been made. Meetings have been dispensed with. The reasons for the scheme are set out in para 12th of the petition.

4] The necessary declarations have been made.

5] The scheme has been examined by the Regional Director and in his affidavit the Regional Director has referred to the report of Registrar of Companies. The Scheme is not found to be prejudicial to the interest of Creditors and Shareholders. However, the Registrar of Companies as also the Regional Director seek compliance with the provisions of Companies Act, 1956 in respect of filing necessary forms after the scheme is sanctioned as the same involves change of the name of Transferee Company. Similarly, some modification may be needed to the object's clause of the Transferee Company.

6] Mr.Purohit appearing for the petitioners, after taking instructions makes a statement that due compliance with all statutory requirements and provisions would be made.

7] He also states that Reserve Bank of India sanction would be obtained and provisions of all necessary enactments applicable to N.R.I. especially

to hold shares with meeting also be made. Hence objections of the Regional Director raised in his affidavit would not survive. The Regional Director has already stated that the Scheme is not prejudicial in any manner to the interest of shareholders and creditors.

8 As far as the Official Liquidator is concerned, he refers to the report of the Chartered Accountants who have scrutinized relevant records and books of account as also audited accounts for the past five years. They have gone into all relevant details and raised necessary queries. It appears that with regard to the queries posed by the Chartered Accountant to the management of the Transferor Company, according to the Official Liquidator, satisfactory explanation was not given. This pertains to an excise duty demand and writing of Bad Debts.

9 The Official Liquidator, therefore, addressed the communication to the Chartered Accountant and Chartered Accountant have replied on 8th June, 2006 stating that the excise duty demand has been quashed and set aside and the petitioner company has succeeded before the Customs Excise Gold Control Appellate Tribunal in appeal.

10] As regards the written off Bad Debts, the Chartered Accountants have explained that the same is in ordinary and regular course of business. The percentage of the Bad Debt written off considering the annual turnover is negligible. The Official Liquidator has referred to the reports as also the communication. The Chartered Accountants upon scrutiny of the records and books of account, as also the explanation to their queries, have opined that the affairs of the Company have not been conducted in the manner prejudicial to the interest of its members or to public interest.

11] Considering the materials referred to above as also the further affidavit filed on 27th June,2006, in my view, the petitions deserve to succeed. Company Petition No. 152/2006 and Company Petition No. 153/2006 are made absolute in terms of prayer clause (a) to (k) subject to payment of costs to Regional Director and Official Liquidator quantified at Rs. 2,500/-.

12] All concerned parties including Registrar of Companies to act on the ordinary copy of the order and scheme annexed to the petition authenticated by

the Company Registrar, High Court, Bombay.

13] Filing and issuance of drawn up order is dispensed with.

[S.C.DHARMADHIKARI,J.]